IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 87 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

ASSISTANT COMMI. OF INCOME TAX

Versus

ALL INDIA WOMEN CONFERENCE

Appearance:

MR MANISH R BHATT for Petitioner

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE M.S.SHAH

Date of decision: 24/04/2000

ORAL JUDGEMENT

(per M.S. Shah, J.)

In this appeal under section 260A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), the Commissioner of Income-tax, Surat, has challenged the judgment and order dated 20.10.98 passed by the Income Tax Appellate Tribunal, Ahmedabad, in ITA No. 3716/Ahd/1992.

2. The respondent-assessee is a trust which filed its return of income for the Assessment Year 1989-90 declaring nil income after claiming exemption under sec. 11 of the Act. While passing the order under sec. 143(1)(a) of the Act, the Assessing Officer assessed the income of the trust at Rs. 6,91,270/- and he did not accept the claim for exemption on the ground that the accounts of the trust were not audited although the income exceeded Rs. 25,000. Therefore, the condition stipulated by sec. 12A(b) of the Act was not fulfilled. However, the assessee carried the matter in appeal before the Dy. Commissioner of Income-tax (Appeals), Surat, who allowed the appeal on the ground that the adjustment made by the Assessing Officer was beyond the scope of sec. 143(1)(a) and deleted the addition. Hence, the Department carried the matter before the Tribunal. The Tribunal dismissed the appeal by the impugned judgment and order dated 20.10.98. Hence, the Department has come in appeal before this Court.

3. Mr. B.B. Naik, learned counsel for the department, has submitted that since the audited accounts were not produced, the Assessing Officer was justified in not accepting the assessee's claim for exemption under sec. 11 of the Act as necessary condition was not fulfilled. In this connection, it is required to be noted that the Tribunal has given a finding of fact that before the appellate procedure the audit report was filed. The Tribunal also referred to the provisions of sec. 139(9) and held that the assessee was not given an opportunity to rectify the defective return.

4. In view of the aforesaid findings of fact, we do not think that the appeal deserves to be admitted for considering the following question:

"Whether the Appellate Tribunal is right in law and on facts in holding that the Assessing Officer was not justified to make prima facie adjustment under section 143(1)(a) in relation to the claim for exemption by the trust under section 11, when the trust failed to comply with the provisions of section 12A(b) of the Act?"

5. In the facts and circumstances, we see no merit in this appeal. The appeal is, therefore, summarily dismissed.

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